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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 KATHRYN HYLAND, *et al.*,

4 Plaintiffs,

New York, N.Y.

5 v.

18 Civ. 9031 (DLC)

6 NAVIENT CORPORATION, *et al.*,

7 Defendants.

8 -----x

Teleconference

9 Fairness Hearing

10 October 2, 2020

11 3:10 p.m.

12 Before:

13 HON. DENISE L. COTE,

14 District Judge

15  
16 APPEARANCES

17  
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DR. JANE HANSON  
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MICHAEL LOMBARDO  
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GREGORY CLAUSS  
Pro Se Objector

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1 THE COURT: Good afternoon, counsel. This is Judge  
2 Cote.

3 Do we have a court reporter?

4 THE COURT REPORTER: Good afternoon, Judge. Kristen  
5 Carannante.

6 THE COURT: Thank you very much.

7 I will briefly take appearances for the plaintiff.

8 MS. KONANOVA: Good afternoon, your Honor. This is  
9 Yelena Konanova of Selendy & Gay for the plaintiffs. I'm here  
10 with Faith Gay of Selendy & Gay, and our co-counsel, Mark  
11 Richard, is also on the line.

12 THE COURT: Thank you.

13 And for the defendants.

14 MS. SIMONSEN: Good afternoon, your Honor. Ashley  
15 Simonsen, of Covington & Burling, for the defendants Navient  
16 Corporation and Navient Solutions, and also on the line with me  
17 today is my colleague Andrew Ruffino, also of Covington &  
18 Burling.

19 THE COURT: Thank you.

20 And counsel for the objector Richard Carson.

21 MR. ISAACSON: Good afternoon, your Honor.

22 May it please the Court:

23 I'm Eric Alan Isaacson, representing Richard E.  
24 Carson III, a class member and objector.

25 THE COURT: And counsel for objector William Yeatman.

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1 MS. ST. JOHN: Good afternoon, your Honor. This is  
2 Anna St. John, with the Hamilton Lincoln Law Institute on  
3 behalf of objector William Yeatman.

4 THE COURT: Thank you.

5 And I believe we have five other objectors.

6 Ms. Amoroso, are you on the line?

7 MS. AMOROSO: Yes. Good afternoon, your Honor. This  
8 is Jessica Amoroso.

9 THE COURT: Thank you.

10 And is it Ms. Nedra Barnes-Larrieux?  
11 Ms. Barnes-Larrieux, are you on the line?

12 MS. BARNES-LARRIEUX: Good afternoon.  
13 Ms. Barnes-Larrieux is on the line. My apologies. I was  
14 muted.

15 THE COURT: Thank you.

16 Jane Hanson, are you on the line?

17 DR. HANSON: Yes. Good afternoon, Judge. I am here.

18 THE COURT: Thank you.

19 Michael Lombardo, are you on the line?

20 MR. LOMBARDO: I am here, your Honor. Good afternoon.  
21 Thank you.

22 THE COURT: And finally Gregory Clauss, are you on the  
23 line.

24 MR. CLAUSS: Good afternoon, your Honor. This is  
25 Gregory Clauss.

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1 THE COURT: Good.

2 So normally, counsel, we would all be meeting in my --  
3 counsel and objectors, we would all be meeting in my courtroom  
4 for this fairness hearing, but as everyone is well aware, we  
5 are in the middle of a pandemic, and therefore we are  
6 conducting this fairness hearing through a telephone conference  
7 call with each other.

8 I have given public notice of this fairness hearing,  
9 and therefore members of the press or the public or other  
10 objectors to whom I have not given permission to speak may also  
11 and I hope are listening in.

12 Let me welcome everyone and begin with a brief  
13 introduction of what's going to happen at this fairness  
14 hearing.

15 On April 24 of this year, the parties in this  
16 litigation entered into a settlement agreement. In that  
17 settlement agreement, the defendants, who I will refer to as  
18 "Navient," agreed to pay \$2,400,000. All of it is destined for  
19 a *cy-près* fund, if it is not reduced by the Court to pay either  
20 incentive awards or make an award of attorney's fees. That  
21 *cy-près* fund has now been identified by the plaintiffs as the  
22 Public Service Promise organization.

23 The parties, in their settlement agreement, agreed  
24 that a *cy-près* award of \$1,750,000 was appropriate and that  
25 incentive awards of \$15,000 a piece for each class

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1 representative were appropriate, and Navient agreed not to  
2 object to an application of reasonable attorney's fees in the  
3 amount of half a million dollars. In that settlement  
4 agreement, Navient also agreed to enact what are described as  
5 enhancements to its business practices.

6 The parties agreed that the settlement would be final  
7 despite any order reducing or relating to the application in  
8 connection with attorney's fees or incentive awards.  
9 Therefore, it is understood that Navient will be paying  
10 \$2,400,000 in total -- no more, no less. Navient also agreed  
11 to pay the cost of providing notice to the class and for  
12 administration of the settlement.

13 All class members have reserved or retained their  
14 right to sue Navient for damages due to them as individual  
15 plaintiffs should they bring such lawsuits. The class  
16 representatives, though, have waived the right to sue Navient  
17 in the future, and it is understood that this settlement will  
18 bar any further class action litigation arising out of the same  
19 allegation or related allegation.

20 Let me make a few initial observations about this  
21 settlement:

22 As I mentioned, this action was brought as a class  
23 action. There was a motion to dismiss brought against the  
24 litigation as described in the complaint, that is, against the  
25 claims described in the complaint, and only one claim survived

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1 that motion to dismiss litigation. It was a New York State law  
2 claim. And as the parties' papers recognize, or at least the  
3 plaintiffs' papers recognize, this case, in the court's view,  
4 was unlikely to succeed as a class action if litigation  
5 proceeded further. Any misrepresentations that may have been  
6 made by Navient or any omissions, failures to speak, would have  
7 arisen in response to questions asked by borrowers, and that  
8 analysis, both questions and the responses, were all dependent  
9 on the circumstances described by the borrowers and as those  
10 circumstances were understood by Navient. That presented an  
11 enormous hurdle to finding that there were common questions of  
12 fact that would bind the class and for finding that individual  
13 fact issues and questions would not overwhelm this litigation  
14 if pursued as a class action.

15 During the course of this litigation, the United  
16 States Court of Appeals for the Second Circuit issued a  
17 decision in a lawsuit called *Berni*. That decision was issued  
18 on July 8 of this year, and I asked both the plaintiffs and  
19 defense counsel to respond in letters about the implications of  
20 *Berni* for approval of their settlement agreement, and they did  
21 so in letters of July 20, and the plaintiffs' letter of July  
22 20, I think, captures the challenges of pursuing this  
23 litigation as a class action. The plaintiffs' counsel  
24 explained that borrowers allege harm from misrepresentations  
25 regarding complex and individualized financial issues, not a

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1 simple, repetitive deception easily understood upon purchase  
2 and visual inspection of a product. Therefore, what appeared  
3 to be true early in this case was that this litigation was  
4 unlikely to be certified as a class action, and unless it were  
5 certified as a class action to recover damages, there can be no  
6 recovery of damages for the class upon successful pursuit of  
7 the litigation.

8 The settlement here and my role today does not require  
9 me to find whatsoever that Navient's past business practices  
10 were inadequate in any way. That is not my role today, and I  
11 am not equipped, based on what I know as of now, to make a  
12 finding in that regard.

13 But that being said, I want to congratulate the  
14 parties on their settlement. I think they are to be praised  
15 for this creative resolution of these issues. Public service  
16 employees deserve our nation's thanks at all times. During  
17 this pandemic I think we are particularly aware of the great  
18 debt our nation owes them, and to the extent that settlement  
19 will benefit public service employees, it is all to the good.  
20 And to the extent that this settlement benefits Navient by  
21 causing it to improve its practices and training, that is all  
22 to the good as well. Any corporate citizen in this country  
23 should want to hold itself to the highest ethical standards and  
24 a settlement that insists and encourages that is to be valued.

25 So what we are going to do now is hear from the

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1 objectors to this settlement. Notice was given after I  
2 approved the notice process and the wording of the notice, so  
3 the objectors have been given a description of this litigation  
4 and an opportunity to make their objections in writing and by  
5 speaking. In order to make an additional objection orally,  
6 they were required to comply with the requirements set out in  
7 the notice; and, while 21 class members requested to be heard  
8 orally at this hearing, only seven have complied with the  
9 requirements set out in the notice.

10 So I issued an order this week, on September 30,  
11 listing those seven individuals and the time that they would be  
12 permitted to speak. I have listed them in alphabetical order  
13 of the objectors' names, except for one objector. Mr. Clauss  
14 only sought one minute, and I thank Mr. Clauss for his  
15 willingness to be concise in comments. Since the others are  
16 being held to five minutes, I let Mr. Clauss be the last to  
17 speak so he would have the benefit of anything that was said  
18 before.

19 After we have heard from the objectors, I will hear  
20 from plaintiffs' counsel and I will hear from defendants'  
21 counsel, and then I will give you my ruling first on the  
22 settlement generally, then on the request for incentive awards,  
23 and finally on the request for an attorney's fee award.

24 In connection with that last request, I want to put  
25 everyone on notice of the following: I have a concern as to

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1 whether this Court and the class were given adequate notice of  
2 the attorney's fees request being made and presented to me  
3 today.

4 And so with that initial observation, Ms. Amoroso, you  
5 have five minutes to convey anything you would like to convey  
6 to me regarding this settlement.

7 (Pause)

8 THE COURT: Ms. Amoroso?

9 MS. AMOROSO: Yes. This is Jessica Amoroso. Good  
10 afternoon, your Honor.

11 May it please the Court:

12 Thank you for hearing our statements today.

13 I respectfully ask this Court to refrain from  
14 approving the proposed public student loan forgiveness  
15 settlement regarding Navient in this matter.

16 My objection lies upon three main pillars:

17 First, the vast --

18 THE COURT: Excuse me, Ms. Amoroso?

19 MS. AMOROSO: Yes, your Honor.

20 THE COURT: Thank you. We have a court reporter. So,  
21 it is important that she capture everything you say, and so  
22 please, if you could, slow down. Thank you.

23 MS. AMOROSO: Yes, your Honor. I apologize.

24 The three main pillars that I support my objection  
25 with are the vastness of the scope of the eligible class

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1 members, the fact that the settlement does not provide any  
2 financial compensation to all of the class members, and that  
3 the proposed relief isn't sufficient to remedy the systemic  
4 problems presented and exacerbated by Navient's loan servicing  
5 practices at the expense of PSLF borrowers.

6 The scope of the class in this matter is far reaching  
7 and affects hundreds of thousands of student loan borrowers  
8 across this country. A matter of this magnitude requires  
9 thorough vetting to reach and inform class members of the  
10 rights that they will forego in this settlement.

11 This includes current borrowers, those who have  
12 submitted a PSLF application who have been rejected, those who  
13 will enter repayment at a future time, and those who have  
14 missed the opportunity to accumulate qualifying payments and  
15 have lost those opportunities while serving forbearance  
16 periods.

17 There is a vast application to many professions who  
18 are similarly situated, share commonality, and have been  
19 collectively affected by Navient's loan servicing practices in  
20 the PSLF program.

21 Navient's Legal Action Facts website indicates that  
22 there are more than 400,000 borrowers serviced by Navient  
23 paying off their student loans every year. In a Department of  
24 Education report issued last month, there were over 3 million  
25 eligible employment certification forms. The Department of

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1 Education last year rejected over 100,000 PSLF applications,  
2 and the Federal Student Aid Data Center indicated that 24  
3 percent rejected those who were missing information on  
4 forgiveness applications and 15 percent for ineligible loans.  
5 These issues, if properly maintained through the loan servicing  
6 business, could have been identified just by the mere fact of  
7 servicing loans through the PSLF process.

8 The settlement, once entered, carries long-ranging  
9 ramifications for generations of student loan borrowers who may  
10 not have been notified and therefore will unknowingly forego  
11 rights to pursue class actions against Navient in the future.

12 The proposed settlement also does not afford any  
13 monetary relief for all class members. At the outset, there is  
14 a glaring inequity presented in the PSA regarding the financial  
15 relief, but it is -- because there is \$500,000 being afforded  
16 to plaintiffs' attorneys and none of the class members will see  
17 any financial compensation. Additionally, this amount is more  
18 than 30 times that of which each class representative has  
19 sought to receive under the settlement.

20 In addressing the third main reason why I propose an  
21 objection in this matter is the fact that altogether those  
22 business practice proposal modifications are ultimately  
23 reactive to the sum, that do not address past harms, namely,  
24 those by PSLF borrowers who missed the opportunity to  
25 accumulate qualifying payments, and therefore financial

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1 compensation would be the best remedy to rectify that harm.

2 Additionally, as an example, Navient proposes that  
3 they will create forms to be sent electronically via e-mail to  
4 borrowers to request additional information about PSLF. This  
5 is a systemic omission of critical tailored forms that should  
6 have been available in the first place, so instituting this  
7 resolution does not adequately compensate the class in this  
8 matter.

9 THE COURT: Thank you very much, Ms. Amoroso. I  
10 appreciate that.

11 MS. AMOROSO: Thank you, your Honor.

12 THE COURT: Yes.

13 And is it Ms. Barnes-Larrieux?

14 MS. BARNES-LARRIEUX: Yes. That's correct, Judge.

15 THE COURT: You may proceed.

16 MS. BARNES-LARRIEUX: Thank you.

17 Good afternoon, Judge. Thank you for allowing me the  
18 opportunity to speak today.

19 I am grateful to have had the opportunity to  
20 successfully obtain an undergraduate and postgraduate degrees,  
21 which I believe have created consistent career progression in  
22 my current field.

23 I have held loans with Navient for an estimated 15  
24 years or more that are all in good standing. During that time,  
25 I have inquired about the Public Service Loan Forgiveness

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1 process, as I have been a public servant since 2003 based on  
2 the criteria outlined by the Federal Student Aid website.

3 I have contacted Navient on a number of occasions,  
4 sometimes three to four times a year, to get clarity on the  
5 process. Because the information provided by Navient has not  
6 been consistent as of today, I have yet to complete the Public  
7 Service Loan Forgiveness application, yet I have continued to  
8 make consistent payments that are all in good standing.  
9 Because of the unclear guidance, it has been less than  
10 motivating and very discouraging to complete this process.

11 Also, I have been informed by some Navient  
12 representatives that I do qualify for Public Service Loan  
13 Forgiveness. Other Navient representatives have informed me  
14 that I do not, as recent as January of this year.

15 Additionally, I have been met with less than  
16 satisfactory customer service and continued unclear responses  
17 regarding why I do not qualify for this process. I have had  
18 errors made on my account when applying for income-driven  
19 repayment loan plans. I have also had my husband's income  
20 challenged when he transitioned from active to reserve duty  
21 status in the military.

22 Again, I contacted Navient on or about July of this  
23 year to request a transcript of my communications with Navient  
24 from the last ten years. At that time, I was informed I could  
25 request this information and the transcript would be mailed to

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1 me. However, I was not informed during that call if there were  
2 any additional steps required of me as the loan holder. I  
3 never received the transcript from Navient or any  
4 communications regarding why the requests could not be  
5 completed. Yet again, another misrepresentation of Navient's  
6 communication with me.

7 For the aforementioned reasons, I believe Navient  
8 should uphold higher standards and take accountability for  
9 misrepresentation of the Public Service Loan Forgiveness  
10 process communicated to me as well as other loan holders.

11 The Navient mission statement reads: "At Navient, our  
12 mission is to enhance the financial success of our customers by  
13 delivering innovative solutions and insights with compassion  
14 and personalized service." Navient has not upheld this mission  
15 to me or many others who have been affected or impacted by the  
16 lack of clear communication with respect to Public Service Loan  
17 Forgiveness. It is important to understand that as long as I  
18 have an outstanding debt with Navient or any other loan holder  
19 and accumulate interest, it does not benefit me, but Navient.

20 Thank you for allowing me to speak, and I hope that  
21 what I have said is taken into consideration.

22 THE COURT: Well, it certainly will be, and thank you.  
23 And, really, I have great appreciation for every objector and  
24 everyone who has asked to be heard either through their written  
25 submission or orally. It is very significant.

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1 Mr. Carson.

2 MR. ISAACSON: Thank you, your Honor.

3 May it please the Court:

4 This is Eric Alan Isaacson for Richard E. Carson III.

5 Several matters I would like to focus on:

6 One is the fact that the settlement agreement bans  
7 individual members of the class from proceeding with a class  
8 action. Well, actually, what the settlement agreement says is  
9 to define a class action or aggregate action as "any litigation  
10 proceeding in which five or more separate individuals propose  
11 to prosecute their claims in the context of the same legal  
12 proceeding." So we are not talking about a settlement  
13 agreement that merely bars class actions where it might be  
14 difficult to certify a class on account of individual issues  
15 relating to reliance. This is barring any aggregate litigation  
16 where five or more members of the class who may have very  
17 similar claims try to proceed in a single action. That is  
18 prohibited. So this does not just ban class action, it bars  
19 mass actions. And, quite frankly, that means that you wouldn't  
20 be able to put together 100 or 1,000 class members in order to  
21 proceed to trial with a mass action. It's going to have to be  
22 individual claims, no more than four.

23 That makes individual litigation impossible as an  
24 economic matter. It is not economically feasible. So as a  
25 practical matter, this is barring the litigation of most



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1 individual class members' claims. They cannot do it. That  
2 means, as a practical matter, they should be treated as a Rule  
3 23(b)(3) class, with people given an opportunity to opt out so  
4 they can defend their real interest in this stuff. The fact  
5 that Navient has insisted on including such a provision is, I  
6 think, a very strong indication that members of the class are  
7 losing something very important when they are barred from  
8 proceeding with individual actions.

9 Another point that I think bears some emphasis is the  
10 fact that there is a conflict of interest with respect to AFT  
11 organizing the litigation, instigating the litigation, choosing  
12 the named plaintiffs who are its members, and then hiring and  
13 paying class counsel. That is a conflict of interest to which  
14 class members have not consented.

15 I think that it is necessary for the Court to consider  
16 and for the class to be able to see a number of things. That  
17 would include the plaintiffs' retainer agreements with class  
18 counsel. It would also include all communications between AFT  
19 and class counsel and all communications between AFT and the  
20 named plaintiffs. Because AFT is not a party and because AFT  
21 is not a law firm, that does not violate attorney-client  
22 privilege to require production of those things. They should  
23 be made a part of the court record in this case because of the  
24 inherent problems of conflict of interest.

25 Those problems are exacerbated by the fact that the

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1 named plaintiffs are getting \$15,000 a piece which compromise  
2 individual class members, the rest of the class's ability to  
3 pursue litigation in a settlement agreement that bars five  
4 people from getting together to litigate their claims, making  
5 that litigation impossible.

6 Those incentive awards are illegal under the Supreme  
7 Court's opinion in *Greenough, Trustees v. Greenough*, and  
8 *Pettit*. They are also illegal under New York law. They are  
9 prohibited by the principles that in Rule 23 class actions  
10 class members are not supposed to get extra benefits that  
11 members of the class do not get. It's a grossly unfair  
12 settlement arrangement and cannot be accepted.

13 I also have to object to the September 25 declaration  
14 that class counsel put in asserting that, with respect to the  
15 individual named plaintiffs, six of them, six of ten have loans  
16 that are still serviced by Navient. If you look at the  
17 declarations they put in, it looks like only two of ten. If  
18 class counsel is going to rely on communications from class  
19 representatives from the named plaintiffs, they need to be made  
20 a part of the record. By trying to rely on them, any  
21 attorney-client privilege has been waived. And if they do not  
22 put those communications in, I don't think that class  
23 counsel's hearsay declaration can be relied on, and we move to  
24 strike it.

25 The same goes with respect to what the declaration

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1 says about a communication from Navient about the number of  
2 members of the class who received notice who are participants  
3 in FedLoans, and moved to FedLoan. We need to see the  
4 communication from Navient. We need to know what the  
5 communication from Navient was based on. And I want to  
6 emphasize that it does not say Navient communicated that most  
7 members of the class still have loans serviced by Navient. I  
8 think that that is telling. Most members of the class do not  
9 have loans serviced by Navient. That means that the injunctive  
10 relief is prohibited by the Second Circuit in *Berni* opinion, in  
11 *Wal-Mart v. Dukes* the Supreme Court's opinion.

12 And with respect to the *cy-près* award, it is clearly  
13 designed to help future people, future students taking out  
14 loans, not the current class. It is something that cannot be  
15 approved for that reason, and the indication in the papers that  
16 we have seen is that it is only going to serve 11,000 people a  
17 year. This is a class that consists of over 300,000 people,  
18 your Honor.

19 Under the circumstances, the proposed settlement  
20 cannot be approved.

21 I see my five minutes have run. It really has not  
22 been enough time to underscore all of the problems with this  
23 settlement.

24 THE COURT: Thank you, Mr. Carson, but of course --

25 MR. ISAACSON: Mr. Isaacson.

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1 THE COURT: I'm sorry. Mr. Isaacson. You made a  
2 written submission as well and that certainly --

3 MR. ISAACSON: Yes.

4 THE COURT: -- is part of the record. Thank you  
5 very --

6 MR. ISAACSON: Yes, your Honor.

7 THE COURT: -- very much for your comments.

8 Ms. Hanson.

9 MR. ISAACSON: Your Honor, I made a written  
10 submission, but I did not have the benefit of the September  
11 11th communication from class counsel regarding the  
12 relationship with AFT. I did not get to see the declaration  
13 that was put in on the 25th. There are a lot of things that I  
14 have not had the opportunity to review before putting in the  
15 written declaration -- written objection and memorandum.

16 Thank you, your Honor.

17 THE COURT: Thank you, Mr. Isaacson.

18 Ms. Hanson.

19 DR. HANSON: Good afternoon, and thank you, your  
20 Honor.

21 May it please the Court:

22 I am Dr. Jane Hanson, and I hope to add some more  
23 personal insights about the people who are harmed by dropping  
24 the class action suit. I would -- I opine that the purpose of  
25 these forgiveness programs for student loans is to encourage

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1 students to enter fields of public service to benefit our  
2 institutions communities. We have heard that. My own public  
3 service and use of my doctorate has been highly unorthodox.  
4 Instead of selecting from my tenure-track faculty offers, I  
5 chose to return to my *alma mater* to be close to my home, my  
6 family, my roots, and to give back to the people of my state,  
7 Nebraska.

8 While consolidating my full-time position as advisor  
9 and senior lecturer at UNL, which has been my primary  
10 employment for the past 11 plus years, I also served as a  
11 half-time director of the Family Literacy Program for our local  
12 Lincoln Literacy Council. Lincoln's public school system  
13 Boasts over 76 languages because we have been a center for  
14 immigrant resettlement for the past 20 years. This translates  
15 to a very great appreciation of English as a second language  
16 and increasing literacy skills.

17 Early childhood teachers here, as everywhere, are  
18 responsible for referrals for special ed. Our youngest  
19 immigrants, those also targeted by the nonprofit Family  
20 Literacy project, were at risk of deferral when teachers had  
21 little experience differentiating between ESL or language  
22 delays. I involved young teachers from the university's  
23 teacher education program and novel pre-practicum teaching  
24 experiences. And as a final illustration of my unorthodoxy, of  
25 being an outlier, an uber social contributor, I received the

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1 prestigious President's Lifetime Volunteer Service Award in  
2 2019 for more than 7,000 hours as a Mensa Education and  
3 Research Foundation Trustee.

4 I am a communications specialist, having taught  
5 language and social linguistics for 22 plus years, from pre-K  
6 to adult learning. I recognize good communication, and I am  
7 now the victim of very poor communication.

8 Financial entities need to be experts at  
9 communication. However, Navient has been woefully remiss in  
10 communication as follows:

11 1. I consolidated my student loans upon graduation in  
12 2008 and no one, not even my previous university, told me that  
13 consolidating different types of loans together might  
14 jeopardize forbearance of the loan or even that I could choose  
15 to consolidate either with a private entity or a government  
16 entity. The purposes for different types of loans were never  
17 explained, neither by Direct Loan Servicing nor the university,  
18 nor were the ramifications of the choice of private over  
19 governmental entity. At some point I was informed that Navient  
20 would be taking charge of my consolidated loan. There was no  
21 explanation at that time the significance, nor was there any  
22 choice or recourse offered. I signed.

23 2. I strongly object to the proposed settlement  
24 because although it addresses a piece of the corporation's  
25 communication woes, as we have just seen, it discards with a

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1 broad brush all those who have in good faith maintained their  
2 commitment and provides them with no financial relief.

3 Furthermore, I was informed in 2009, in a telephone  
4 conversation, following up on my loan consolidation with the  
5 agent at Navient, that my loan would be eligible for  
6 forgiveness if I worked for my new employer, University of  
7 Nebraska, a public entity, for at least ten years. I made sure  
8 I never missed a payment or was late, although I struggled  
9 financially and with both my sons disabled, I maintained my  
10 unorthodox status by never doing so. I have never missed a  
11 payment nor have I been late.

12 3. However, in May of 2017, nine years later, when I  
13 first submitted my Public Loan -- Public Service Loan  
14 Forgiveness form, Navient informed me that only one of my  
15 loans -- I had supplied copies of the first and of second  
16 document, as well -- precluded me from qualifying for the PSLF  
17 for a mere \$5,000 out of a total of all of my loans. This  
18 pretext was used to bar me from forgiveness. I have not missed  
19 one payment or been late, again.

20 4. At age 66, I have to be one of the oldest members  
21 of this class action as I finished my doctorate in 2008 at the  
22 age of 54.

23 THE COURT: Excuse me. Dr. Hanson, I am losing you.  
24 Can you speak up?

25 DR. HANSON: Yes, I can.

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1 THE COURT: Thank you.

2 DR. HANSON: At age 66, I have -- you're welcome.

3 At age 66, I have to be one of the oldest members of  
4 the class action, as I finished my doctorate in 2008 at the age  
5 of 54. Navient has not informed me that there is any decrease  
6 in payment available for income reduction, such as in my  
7 retirement, or at any time previously, in any of my  
8 communication with Navient. Furthermore, I only learned of  
9 this possibility by reading the materials related to this class  
10 action suit and materials published in the press.

11 Thank you for reflecting on my words. Those of us  
12 speaking here today have been victimized by the corporate  
13 actions of Navient. There has to be a -- I'm sorry. Is  
14 that --

15 THE COURT: Dr. Hanson, I very much appreciate your  
16 words. I think you are reacting to some ambient noise here,  
17 but I --

18 DR. HANSON: I managed to get rid of it. It was mine.  
19 I have two sentences, and then I am done. Thank you.

20 So I say thank you for reflecting on my words, and I  
21 just said those of us speaking here today have been victimized  
22 by the corporate actions of Navient. There has been harm done.  
23 Their statement says that they show compassion. Please tell  
24 them to respect the students who have made a commitment to be  
25 contributors and good citizens by making their payments.

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1 Thank you.

2 THE COURT: Thank you, Doctor.

3 Mr. Lombardo.

4 MR. LOMBARDO: Thank you, your Honor, and good  
5 afternoon.

6 So, to start out, in 2007, I had private loans with  
7 Sallie Mae. I was employed at the time as an in-home family  
8 therapist for a human social services organization here in  
9 Pittsburgh, working with troubled children and their families  
10 involved with Allegheny County Juvenile Family Court. Since  
11 November 2007, I have been at my current position as a juvenile  
12 probation officer for Allegheny County Juvenile Probation.

13 Because of my employment, I heard bits and pieces  
14 about Public Service Loan Forgiveness in 2008-2009, and in  
15 either April or May 2009, I called Sallie Mae --

16 THE COURT: Mr. Lombardo, Officer Lombardo, if you  
17 could just slow down, please.

18 MR. LOMBARDO: I will, your Honor. Thank you.

19 So 2008-2009, I called Sallie Mae customer service, in  
20 either April or May of that year, to see if I qualified for  
21 Public Service Loan Forgiveness. I wanted to find out more. I  
22 told them what I did for a living. I was told that I was  
23 eligible for this, even though I had private loans, and I was  
24 never told that I had to switch to direct federal loans. I  
25 believed the customer service representative, and I kept making

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1 my payments.

2 Then in May 2012, because I made a few extra payments,  
3 I wanted to skip a payment and go on vacation and use that  
4 money for my vacation. I called Sallie Mae to see if I could  
5 do that and still be on track. That's when I was told I was  
6 not eligible for Public Service Loan Forgiveness because I had  
7 private loans, which is not what I was told three years  
8 earlier. I continued making my monthly payments, but to say I  
9 was angry, understatement.

10 I started taking action in 2013. I wrote Sallie Mae,  
11 told them what happened, and I merely wanted these previous  
12 payments to be retroactively applied as part of the 120  
13 payments, so come October 2017, I could get loan forgiveness.  
14 All they did, all Sallie Mae did was write me and tell me that  
15 we value you as a customer and told me to switch to Direct  
16 Federal Loans. They never addressed my concerns and totally  
17 ignored me.

18 In 2014-2015, besides writing to Sallie Mae Chairman  
19 Anthony Terraciano at the time, I wrote the Department of  
20 Education and my three elected officials in Washington --  
21 Representative Mike Doyle, Senator Toomey, and Senator Casey --  
22 asking them to help me out, so come October 2017 I could get  
23 forgiveness. I never heard from the education department. My  
24 three elected officials all wrote me back and told me  
25 essentially that there is nothing they could do for me. I will

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1 highlight, in Navient's transparency report 2018, it said that  
2 Senators Toomey and Casey received campaign contributions from  
3 Navient.

4 In 2014, I switched to Direct Federal Loans. I  
5 learned that the Consumer Financial Protection Bureau and my  
6 Pennsylvania Attorney General Josh Shapiro filed lawsuits  
7 against Navient, I believe both in 2017. I filed complaints  
8 with both entities, and I am awaiting the outcome of those  
9 lawsuits. The Navient consumer advocate told the Attorney  
10 General's office that they have no record of me calling them in  
11 2009, but yet they have record of me calling them in 2012 when  
12 they told me I was not eligible.

13 From October 2017 to this past June 2020, I made 43  
14 more payments, paying a grand total of \$42,777.41, until my  
15 loan got paid off. Now, had Navient and Sallie Mae told me the  
16 right information from the get-go, I would not have had to pay  
17 an additional close to \$43,000 since October 2007.

18 So I object because I figure if they have the money to  
19 make political contributions and to spend money to improve the  
20 system with Public Service Loan Forgiveness, which they should  
21 have done in the first place, then certainly they should have  
22 the money to refund every one of us after our 120th payment if  
23 we should have gotten loan forgiveness but didn't, like in my  
24 case the \$42,777.41. And so I feel as though they should first  
25 use that money that they want to use to improve the system and

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1 refund it to us first.

2 And then for those ten plaintiffs there that they are  
3 supposed to be getting \$15,000, let's say one of them paid  
4 \$45,000 after the 120th payment when they should not have. If  
5 they are only getting 15,000 and not 45,000, they are getting  
6 short-changed \$30,000 and, frankly, I really don't think that's  
7 fair.

8 So for those reasons, I have to object to the  
9 settlement.

10 And thank you, your Honor, for giving me this  
11 opportunity to finally speak about this in federal court, as I  
12 have been fighting this battle for over seven years now.

13 Thank you, your Honor.

14 THE COURT: Thank you, Mr. Lombardo. Very  
15 appreciated.

16 So the objector, Mr. Yeatman, I believe, is  
17 represented by counsel, Ms. St. John.

18 MS. ST. JOHN: Thank you, your Honor.

19 May it please the Court:

20 Anna St. John representing objector William Yeatman.

21 I plan to use my time today to address some of  
22 plaintiffs' response to Mr. Yeatman's objection.

23 First, there is a mismatch here, your Honor, that  
24 prevents certification under 23(b)(2). Plaintiffs sought  
25 injunctive relief on behalf of a class defined as those who

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1 intended to contact Navient in the future, and they sought  
2 monetary relief on behalf of class defined retrospectively as  
3 those who contacted Navient in the past.

4 Yet now the settlement takes that retrospectively  
5 defined class, settles claims for which damages are  
6 appropriate, gives the class only forward-looking injunctive  
7 relief, and waives their right to participate in aggregate  
8 litigation for their claims for money damages.

9 Now, plaintiffs argue that this Court previously held  
10 that money relief was improbable, but that raises the question  
11 of why the settlement releases any monetary claims at all. If  
12 the release of aggregate litigation claims is valueless, as  
13 suggested, there is no reason to include it.

14 But smaller groups of class members or subclasses  
15 could litigate for money damages and the class could challenge  
16 the view that money damages are improbable. Class members  
17 shouldn't be giving up the right -- that right for no monetary  
18 relief in the settlement.

19 I also note that plaintiffs' don't that dispute those  
20 class members who are no longer working in the public interest  
21 sector or who have paid off their loans receive no benefit  
22 whatsoever from the injunctive relief.

23 Turning to *cy-près*, plaintiffs make the confusing  
24 argument that class members would have to give up individual  
25 money damages claims in order for the 1.75 million in *cy-près*

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1 to be distributed through a claims process. But that makes no  
2 sense. I don't understand why class members would have to give  
3 up additional rights not negotiated at this settlement. If the  
4 parties were in fact to renegotiate a settlement with a broader  
5 release, then the settlement fund, of course, would be much  
6 greater to match the value of the claims being released.

7 Plaintiffs also question the fairness of a claims  
8 process itself, but that's a standard way that funds are  
9 distributed, particularly when class member addresses are not  
10 readily available. There is nothing unusual about a claims  
11 process. It is far more fair to give those class members who  
12 file a claim actual monetary relief they can use than to give  
13 all class members nothing, which is what this settlement does.

14 The parties already know who is a class member. They  
15 sent out direct notice to those individuals, so it is unclear  
16 why a claims process would require the kind of detailed  
17 documentation of each claimant's financial circumstances and  
18 the details of their oral communications as the plaintiffs  
19 claim.

20 Turning to the question of attorney's fees, we raised  
21 the problem of class counsel having what appears to be a  
22 fee-sharing arrangement with the American Federation of  
23 Teachers that was not disclosed to the Court or the class.

24 Plaintiffs don't deny that they never told the Court  
25 about the funding arrangement with AFT before moving for

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1 preliminary approval or that the class was not notified.  
2 Disclosure was required and it would have allowed better  
3 monitoring of whether the class interests really were  
4 represented.

5 Class counsel's primary rebuttal appears to be  
6 semantic. They claim that the payment is reimbursement rather  
7 than a sharing agreement. But AFT is recovering \$500,000 of  
8 the fees they paid based on class counsel's work. That seems  
9 like the sharing of fees. Class counsel is recovering some  
10 portion and AFT is recovering some portion.

11 Class counsel has been very careful in how they word  
12 the AFT reimbursement. They still have not told us how much of  
13 their fees AFT actually paid. They have only told us how much  
14 their time is worth, how much they have billed, but I haven't  
15 seen any definitive statement about how much of that amount AFT  
16 actually paid. There needs to be transparency about how much  
17 of the fee prepayment the \$500,000 represents.

18 Plaintiffs are also wrong that there is no suggestion  
19 that class counsel's professional independence was compromised  
20 by this payment. There is a longstanding relationship here,  
21 and there appears to be some financial incentive to represent  
22 AFT's interest and to recover money on their behalf. And in  
23 fact AFT, as the Court knows, helped to find the main  
24 plaintiffs in this case.

25 On a final note, I note that in the response

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1 plaintiffs made some personal attacks against Mr. Yeatman and  
2 his counsel, including calling us "professional objectors" and  
3 questioning our motives. We view those attacks as entirely  
4 irrelevant to the fairness of the settlement and the fee  
5 request, and I don't plan to spend any time on them today. If  
6 the Court is interested in this issue, however, we ask that the  
7 Court give us an opportunity to respond and look to the  
8 declaration of Theodore H. Frank, filed as Docket No. 164,  
9 which preemptively addresses some of those issues.

10 Thank you very much for your time today, your Honor.

11 THE COURT: Thank you very much, Ms. St. John.

12 And that brings us to the last objector who will be  
13 heard today, Mr. Clauss.

14 Mr. Clauss, are you on the line?

15 (Pause)

16 THE COURT: Mr. Clauss, I can't hear you. You might  
17 have to unmute yourself.

18 (Pause)

19 THE COURT: I'm still having difficulty hearing you,  
20 Mr. Clauss.

21 (Pause)

22 THE COURT: So I am -- Mr. Clauss, is that you?

23 So I am sorry to report that I am unable to hear  
24 Mr. Clauss. Obviously if he joins us at some point during this  
25 hearing before it concludes, I will be happy to hear anything



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1 that he has to say.

2 But at this point let me turn to Ms. Konanova to  
3 respond to the objections heard today and to say anything else  
4 that she believes would be appropriate to be said in connection  
5 with this application.

6 Ms. Konanova.

7 MS. KONANOVA: Thank you, your Honor. Yelena Konanova  
8 for the plaintiffs and the class.

9 I would like to extend a welcome to all of the class  
10 representatives who are joining us today.

11 Your Honor, this settlement is a great deal for  
12 borrowers, and it provides unique relief that has never  
13 previously been available from Navient and which other class  
14 actions have been unable to obtain. Not only does the  
15 settlement preserve the class members' rights to sue Navient  
16 for individual damages, it materially enhances their ability to  
17 secure forgiveness.

18 I would like to spend a few minutes talking about the  
19 benefits of this settlement as responsive to the objections and  
20 then address some of the other points raised in the objections,  
21 with special attention to the notice of fees request issue that  
22 your Honor has raised.

23 Your Honor, as a result of this settlement, and it  
24 alone, a nonprofit called Public Service Promise has been  
25 incorporated with an initial board of three very impressive

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1 directors and is prepared to launch with a singular focus of  
2 providing service for borrowers in public service to help them  
3 gain loan forgiveness. This is the first of its kind nonprofit  
4 to directly work with public service borrowers to help them  
5 access PSLF.

6 Navient has also implemented business practice  
7 enhancements which directly address the alleged harm. These  
8 enhancements require call center representatives to proactively  
9 ask questions to determine who may be eligible for forgiveness  
10 and to deliver accurate information about how to qualify.  
11 Navient is affirmatively required to train its representatives  
12 to comply and to monitor to ensure compliance.

13 Between the nonprofit and the required changes to  
14 Navient's protocol, borrowers now have a way to get essential,  
15 reliable individualized advice for the first time about how to  
16 obtain their relief from their student debt burden which helps  
17 maximize chances of forgiveness.

18 And as noted, the settlement preserves the right to  
19 bring individual actions for damages, which is directly  
20 responsive to this court's guidance that individual claims are  
21 the most viable avenue for monetary relief, given the  
22 challenges of proving uniformity of oral misrepresentations in  
23 the class context. And the affirmative provisions of this  
24 settlement make that economic relief avenue that much more  
25 viable.

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1           Your Honor, this is an unprecedented result for this  
2 kind of class action. As this Court knows, in the related PSLF  
3 class action against Navient in Florida, the Court denied  
4 certification precisely because varying oral misrepresentations  
5 precluded a finding of commonality. Navient then prevailed on  
6 the individual claims on summary judgment, and the borrowers  
7 got nothing.

8           So taking note of this ruling and this Court's  
9 guidance, we fought as hard as we could to get the most value  
10 of the settlement here for the class while enhancing the  
11 viability of individual damages claimed.

12           Now, your Honor, in response to the objections we have  
13 received and the objections that have been raised today, the  
14 overwhelming majority of these objections share deeply personal  
15 stories of individuals' interactions with Navient and of their  
16 individual financial circumstances. And they ask for various  
17 kinds of monetary relief, such as loan forgiveness or credit  
18 for prior qualifying payments.

19           Your Honor, we take to heart the seriousness of these  
20 statements, the pain they describe. It is the reason we  
21 brought this case, and that is why we preserve individual  
22 damages claims and provide relief that enhances the success of  
23 these claims. We fought for all the relief we could in the  
24 class action context while insisting that these individual  
25 claims are preserved.

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1           And now we always believed we had a strong case to  
2 reform business practices in the class context, and here that's  
3 exactly what these reforms are aimed at. They help borrowers  
4 advance their individual claims whether because they are now  
5 able to receive accurate information from Navient alerting them  
6 to any past inconsistencies or through the nonprofit which can  
7 walk people, all people, regardless of who their servicers are,  
8 whether they are still with Navient or not, it can walk them  
9 through their eligibility and specific steps for obtaining  
10 relief and, if necessary, to refer borrowers out for litigation  
11 of the individual claims.

12           Your Honor, the two professional objections that were  
13 also submitted, these objectors want to deprive the class of  
14 this very significant nonmonetary relief, to throw out the  
15 entire deal with no regard as to what would happen next. They  
16 have not pointed to anything warranting such a drastic result  
17 which would unquestionably leave borrowers worse off, likely  
18 with no relief of any kind.

19           Now, the objectors raised four specific buckets of  
20 objections, which I would like to address in order here.

21           So first, your Honor, they object to the lack of  
22 monetary relief for the class, which, as just discussed and as  
23 the Court reiterated at the beginning of the hearing, would be  
24 very challenging to achieve in this class context. Again, that  
25 is why we preserved individual damages claims and also why the

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1 settlement will not impact the multiple state AG and financial  
2 watchdog cases pending against Navient.

3 Now, second, your Honor, they question the *cy-près*  
4 relief here. Now, for the reasons laid out, it is very  
5 significant because it is the first of its kind nonprofit  
6 directly serving public service borrowers in their quest for  
7 forgiveness. The nonprofit is independent both as a matter of  
8 contract and by virtue of the initial board which has three  
9 powerhouse individuals from the world of servicing settlements,  
10 public interest, and the law. The fact that the group cares  
11 about the same thing we do, which is communicating clear  
12 information to borrowers, is not a conflict. The nonprofit  
13 will provide exactly the kind of information that we know  
14 borrowers need, that we heard today borrowers need. They fill  
15 a hole in the chain of information that badly needs filling,  
16 and if the objectors had their way, the class would be deprived  
17 of that badly needed relief.

18 Now, that leaves objections concerning the service  
19 awards and the fee arrangement.

20 Your Honor, as to the service awards, recent Second  
21 Circuit precedent, including *Melito*, expressly permits service  
22 awards to class representatives based on the time and effort  
23 expended for the class and risks and burdens shouldered for the  
24 class. *Melito* expressly rejects the notion that Supreme Court  
25 precedent that -- from the nineteenth century, that precedes

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1 Rule 23 by decades, bars incentive awards. They have rejected  
2 this argument when it was made by Mr. Isaacson, raised there,  
3 and it should similarly be rejected here.

4 Our class representatives -- six of the ten of whom,  
5 by the way, still have loans with Navient, the others just have  
6 been transferred away to FedLoan since the litigation began,  
7 but six of ten of them still have loans with Navient -- they  
8 submitted an extensive record of their work for this class in  
9 their declaration, and that record focuses on two key points.

10 First, this action was based on oral  
11 misrepresentations. That means that without our class  
12 representative's records and recollections, their calendars and  
13 planners, we could not have written our complaint. By  
14 reconstructing what Navient said to them and when and how that  
15 affected their financial choices, each of them helped us  
16 understand the breadth, depth, and specifics of the problem.

17 And they helped us figure out how to address it, how  
18 to tailor the relief to help the borrowers most, including by  
19 making specific suggestions on the business practice  
20 enhancement and emphasizing the importance of the nonprofit to  
21 aid public service borrowers. They also gave broader releases  
22 than the class in order to secure the deal for the class. So,  
23 your Honor, some of the concerns raised by this Court in prior  
24 cases, such as, the risks that class interests took a back seat  
25 to the class representatives' interests simply do not apply

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1 here. These class representatives fought to get the best deal  
2 possible for the class, at considerable cost to themselves.

3 Your Honor, that cost includes the fact that they have  
4 had to lay bare their finances, effectively publicly  
5 acknowledging they had trouble paying their debts, which is not  
6 an easy thing to do. They helped us share the story with the  
7 public, including through the press, which led to online  
8 harassment directed at them, some with overtly racist  
9 undertones and harassing treatment in their physical  
10 workplaces. This all the took a significant toll, mentally and  
11 physically, on these folks, your Honor. They have described it  
12 in their declarations as traumatizing and degrading. But  
13 without their perseverance we would never have gotten to the  
14 point of achieving this settlement. They did it for the class,  
15 and approving the awards here will spur other publicly minded  
16 individuals to make some more sacrifices.

17 Now, finally, your Honor, as to the fee arrangement  
18 and directly concerning the adequacy of notice regarding that  
19 fee request, Rule 23(h) sets the timing for fee requests at the  
20 time the Court orders so that the class members may have an  
21 opportunity to object. That's exactly what we did here. We  
22 made our fee award at the time ordered, which was August 28.  
23 Class members had two weeks to object.

24 Rule 23 otherwise does not require any funding -- any  
25 disclosure of any sort of funding arrangement. There is a

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1 requirement of notice of fee sharing but, as I will discuss in  
2 a moment, we are not sharing our fees with AFT. We are only  
3 reimbursing in part for the fees that AFT paid.

4 Now, on that question of AFT's role in this  
5 litigation, AFT took on the obligation to fund this litigation,  
6 which meant paying S & G's bills as they come due on a monthly  
7 basis at discounted hourly rates. This uniquely successful and  
8 difficult lawsuit simply couldn't have been brought without  
9 them, and AFT agreed to do this because its mission is aligned  
10 with the class, supporting student borrowers and their request  
11 for loan forgiveness. And if you want public servants to  
12 continue in service fields in these difficult times of course  
13 that is more necessary than ever.

14 But, your Honor, let me be clear, AFT did not control  
15 this litigation. We worked hand in glove with the class  
16 representative on behalf of the class as we detailed above.  
17 And the 2015 *Meredith* case, which we cite in our papers, is  
18 exactly on point, as in that case Judge Engelmayer approved a  
19 fee award to reimburse a nonprofit who paid class counsel fees.  
20 If there were any concerns that -- with that kind of  
21 arrangement, your Honor, we believe Judge Engelmayer would have  
22 raised it, but there is none. Any holding, we believe, that  
23 discourages such arrangements could only mean that important  
24 and complex cases like this one would not be brought.

25 And, your Honor, as to the requests of further



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1 information about this arrangement or communications with AFT,  
2 we are aware of no case in which such discovery was allowed  
3 based on speculation of conflict. Instead, courts say you need  
4 to have some actual evidence of collusion, of a collusive  
5 settlement, in order to allow that kind of discovery, and we do  
6 not have that here.

7 So this extraordinarily modest fee award, which works  
8 out to 8.45 percent of the fees here and the service awards and  
9 the settlement itself should be approved.

10 I'm glad to answer any questions, your Honor.

11 THE COURT: So, Ms. Konanova, I think in the comments  
12 made by objectors today, there were two additional points that  
13 you should address.

14 One is that the -- I just received a note that  
15 Mr. Clauss is back on the line, so I will give him an  
16 opportunity to be heard in a moment. I'm not sure that he is  
17 accessible, but I will certainly inquire again and give him an  
18 opportunity to be heard if he is on the line.

19 MR. CLAUSS: Yes, your Honor, this is Mr. Clauss. I'm  
20 here.

21 THE COURT: Okay, good. Well, Mr. Clauss, when  
22 Ms. Konanova is done speaking, I will give you an opportunity  
23 to be heard.

24 So Ms. Konanova, two points made today orally, and  
25 that is that the bar to the settlement agreement that would be

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1 binding on the class is not just a bar against class actions,  
2 but it is a bar against actions in which -- joinder actions in  
3 which five or more plaintiffs are joined together. That's one  
4 issue I would like you to address.

5 And the second point is that the awards achieved  
6 through the -- or I should say the improvements, including the  
7 *cy-près* award, achieved through the settlement help people who  
8 continue to have debts to be paid down or loans to be forgiven,  
9 but it benefits prospectively and it doesn't benefit those who  
10 have already finished paying off their loans and who no longer  
11 have an opportunity to obtain forgiveness.

12 So if you could address those two issues,  
13 Ms. Konanova.

14 MS. KONANOVA: Thank you, your Honor. I am glad to do  
15 so.

16 On the first issue, it is correct that the release  
17 prohibits class actions as well as aggregate actions, which  
18 release language was defined -- designed to ensure that the  
19 benefit of the bargain that Navient was entering into in the  
20 settlement was actually reached. Your Honor, we negotiated  
21 very specifically to exclude from the definition of "aggregate  
22 actions" any litigation proceedings in which an external  
23 authority or a Court requires particular actions to be  
24 prosecuted together, which includes, but is not limited to,  
25 multidistrict litigation as determined by the JPML actions in

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1 which a Court determines they should be consolidated or  
2 coordinated for efficiency, actions that individuals mark as  
3 potentially related and are deemed related by the Court, or any  
4 actions that are required to be brought together based on the  
5 federal rules of civil procedure or the local rules of any  
6 local, state, or federal court.

7         So, your Honor, we believe this definition both  
8 preserves the benefit of the bargain, which is to say the  
9 release of class and aggregate damages for Navient, but also  
10 allows borrowers who believe that there is a reason for  
11 particular actions to be prosecuted together, as captured by  
12 the categories that I just discussed, to do so without a bar  
13 under the settlement agreement.

14         On the second point, your Honor, with respect to how  
15 does this settlement benefits individuals who do not have loans  
16 any longer, your Honor, those individuals all benefited by the  
17 formation of the nonprofit, the Public Service Promise. That  
18 nonprofit is open to all borrowers, regardless of who their  
19 servicer is or even whether they have individual loans. They  
20 will be able to contact that nonprofit and get individualized,  
21 reliable, accurate information about their personal situations.  
22 And if, as a result of that conversation, it appears that that  
23 person has an individual damages claim against Navient, Public  
24 Service Promise will refer that individual out to an attorney  
25 who would be able to handle such an individual claim. So even

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1 those who no longer have loans, and so they only have questions  
2 as to whether they have been damaged by Navient, will still be  
3 able to rely on this resource of informed, independent advisors  
4 who can talk to them about their individual financial  
5 circumstances.

6 THE COURT: Thank you, Ms. Konanova.

7 Mr. Clauss --

8 MR. CLAUSS: Yes.

9 THE COURT: -- are you able to speak with me now?

10 MR. CLAUSS: Yes, I am. Thank you, your Honor. Do  
11 you want me to give my objection now?

12 THE COURT: Please.

13 MR. CLAUSS: Okay. I object to the proposed  
14 settlement.

15 If Navient agrees to implement substantial procedures,  
16 then they should be comprehensive and transparent in the  
17 following ways:

18 Address the irony of past failures that financially  
19 disable borrowers who've work for qualified nonprofits. In  
20 order for me to be bound by this class action's injunctive  
21 relief, retroactive processing of payments would be mandatory.

22 E-mail communications should outline Navient's  
23 procedures prior to approval to ensure transparency regarding  
24 their specific and substantial plan for action.

25 Mitigate consolidation anxiety. Navient should

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1 protect borrowers from adverse reconsolidation tactics.

2 Reconsolidation should benefit public service employees and  
3 credit their work through past ecosystems, not bluntly refuse  
4 to address past systemic bureaucratic failures.

5 Integrate all student loans within the database into a  
6 singular platform that accommodates public service employees.

7 And, finally, negate compound interest that accrued on  
8 principal over time while qualified applications were steered  
9 away.

10 Thank you.

11 THE COURT: Thank you very much, and thank you for  
12 your concise but carefully thought out comments, Mr. Clauss. I  
13 appreciate that.

14 MR. CLAUSS: You're welcome.

15 THE COURT: Let me just say that -- yes, thank you.

16 I really appreciate the engagement of the class  
17 members in this very important moment in this litigation.  
18 Obviously this class contains a very well-educated population  
19 who are able to think with care about what has happened here  
20 and what should happen in the future, and your comments have  
21 been important for me in my evaluation of the reasonableness of  
22 this settlement.

23 So let me turn now to my task, and there are really,  
24 as I outlined before, three separate issues:

25 First, for me to judge, under the legal standards I

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1 must follow, which are set forth in a case named *Grinnell*,  
2 whether or not the settlement should be approved as fair,  
3 adequate, and reasonable in the circumstances as judged by the  
4 factors set forth in the *Grinnell* case.

5 And the first factor I have to look at, in judging a  
6 settlement, is the factor that is directed to the complexity,  
7 expense, and likely duration of this litigation. I find, and I  
8 don't think there is much dispute here, that this is complex  
9 litigation. It's been expensive to pursue to date and would be  
10 far more expensive if it had continued to the end. I believe  
11 that if the litigation had continued that it would have ended  
12 as a class action through the litigation of a class  
13 certification motion, that the application by plaintiffs'  
14 counsel to certify as a class this lawsuit would have been  
15 denied.

16 That would have left the claims of the New York named  
17 plaintiffs, and I very much doubt that I would have been able  
18 to grant a defendant's motion for summary judgment, and  
19 therefore I think those claims would, in all likelihood, have  
20 proceeded to trial.

21 So this is a complex litigation, with massive  
22 discovery ahead, with complex motion practice ahead, and  
23 probably a trial for some named plaintiff.

24 The second factor I must look at in evaluating the  
25 reasonableness of a settlement is the reaction of the class to

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1 this settlement. I must say that the reaction of the class has  
2 been mixed. This is a very large class, and I think there were  
3 only 115 objections filed that were timely. There were four  
4 more objections, I believe, that were filed late, making a  
5 total of 119 objections.

6 But that really is a large number of objections, even  
7 though the class is so large. Most class actions don't have  
8 the involvement of class members the way this one has, and I  
9 think my ability to make judgments about the reasonableness of  
10 this settlement has been enhanced by the comments received from  
11 the objectors, and so I thank them for those comments.

12 Most of the objections have raised concern about the  
13 lack of an award of damages. They complain that the individual  
14 class members are not receiving any monetary compensation here,  
15 and they complain, at least some of them, bitterly about that  
16 based on their individual circumstances, and that is absolutely  
17 understandable.

18 But, again, I don't believe, and I think really there  
19 is no sound argument to suggest, that there could be a class  
20 action that would result in a monetary award to individual  
21 class members because the circumstances for each individual  
22 member differ so dramatically; and therefore, the only  
23 recourse, the only avenue for obtaining a monetary award for an  
24 individual class member is to pursue your own individual action  
25 or, as I understand it, you may be benefited by lawsuits

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1 brought by government entities. I certainly hope, if that is  
2 an appropriate avenue in those litigations, that that benefits  
3 one and all.

4 The third issue I must address is the stage of the  
5 proceedings and the amount of discovery completed when  
6 settlement was reached. The parties had exchanged some  
7 discovery materials, but this was at the early stage of  
8 discovery. Much more discovery remained to be done.

9 The fourth factor is the risk of establishing  
10 liability. I think that it is very difficult for me to  
11 evaluate the likelihood that the New York named plaintiffs  
12 would have been successful at trial. I'm just not in a  
13 position to evaluate that.

14 The fifth factor is the risk of establishing damages.  
15 Well, as I have already mentioned, there was a grave risk that  
16 the class would not receive any damages award because it could  
17 not be certified as a class action and, as I have already  
18 explained, it is unknown to me whether the New York plaintiffs  
19 would have been able to recover anything.

20 The sixth factor is the risk of maintaining the class  
21 action through trial. I have already said there is a grave  
22 risk that it would not have been maintained through the trial.

23 The seventh factor is the ability of the defendants to  
24 withstand a greater judgment. Navient is able to pay a  
25 judgment far larger than that it has agreed to here.



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1           The eighth factor is the range of reasonableness of  
2     the settlement fund in light of the best possible recovery, and  
3     I find that this settlement is absolutely within the range of  
4     reasonable settlements, given the weighing of all of the  
5     factors I have just discussed.

6           And the last factor is the range of reasonableness of  
7     the settlement fund to a possible recovery in light of all of  
8     the attendant risks of litigation and, again, I find that this  
9     settlement is within the range of reasonable settlements  
10    because there is a grave risk that there would have been no  
11    recovery at all, certainly none for the class, and possibly  
12    none for the named New York plaintiffs.

13          This is a (b)(2), using the jargon from the Federal  
14    Rule of Civil Procedure under which we are operating here, and  
15    there are certain issues about when it is or isn't appropriate  
16    to approve a settlement for a class action when there is no  
17    opt-out provision. I think that is adequately dealt with by  
18    the fact that individual class members retain their right to  
19    bring individual lawsuits. And to the extent that there has  
20    been reference to the Second Circuit decision in *Berni*, I think  
21    those concerns are adequately addressed in the parties' letters  
22    of July 20 that I have already referred to.

23          So let me turn to the incentive awards.

24          As the parties are well aware, since I have discussed  
25    this with them on several prior occasions, I am reluctant to

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1 award named plaintiffs money for anything other than the  
2 reimbursement of their out-of-pocket loss or lost wages. And I  
3 have set forth the reasons for that in a decision that is  
4 publicly filed in the *Credit Default Swaps Litigation*, and that  
5 can be found at 2016 WL 2731524 at \*18.

6 There are grave risks with financial awards given to  
7 named plaintiffs that it will encourage collusion. Named  
8 plaintiffs have a fiduciary duty to class members, absent class  
9 members, and I believe the Court has to be on alert to protect  
10 the rights of absent class members, but certainly named  
11 plaintiffs must. And you do not want that important fiduciary  
12 duty to -- and counsel alluded to this -- take a back seat to  
13 their personal financial interests.

14 So the question is, for me, here, has that happened?  
15 Here the named plaintiffs have very limited out-of-pocket  
16 losses or identified lost wages, and yet each asks to receive  
17 \$15,000. They are giving up the right to sue Navient  
18 individually, so this is all the money that they will receive.  
19 The class, however, individual class members who are absent and  
20 not named plaintiffs, are going to receive no money, and this  
21 has understandably drawn objections from several members of the  
22 class.

23 But I think there is a reduced concern here of  
24 collusion. As I have explained, the individualized issues  
25 regarding any misrepresentations or omissions by Navient would

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1 have prevented class certification, and therefore there is no  
2 damages that could have been awarded to absent class members.  
3 And since those absent class members would not have received  
4 any money, there is little risk that the class representatives  
5 breached their duty in agreeing to this settlement. So that's  
6 one of my important findings as I assess this issue.

7 Now, it is hard, indeed it is impossible, for me to  
8 evaluate the value of what absent class members have retained,  
9 that is, the right to bring suit for individual damages. And  
10 it is also impossible for me to evaluate the value of what the  
11 class representatives have given up in exchange for this  
12 \$15,000. These are, in both situations, complex inquiries.  
13 They depend on the individual's financial circumstances. They  
14 depend on the piecing together of conversations with Navient.  
15 Ultimately, assessments would have to be made as to whether  
16 Navient made misrepresentations or omitted in a way that is  
17 wrongful to add information in response to questions or to add  
18 information to statements that they did make. And of course,  
19 in addition to all of that, whether it is also difficult for me  
20 to know, impossible for me to know whether any of that could be  
21 proven at trial successfully.

22 The next thing that's important to me in evaluating  
23 this request is the following, and I would like you,  
24 Ms. Konanova, to listen carefully to what I am about to say, so  
25 if I have misrepresented or misunderstood anything, I would

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1 like to you correct me.

2 First, it is my understanding that the class  
3 representatives opened their lives to scrutiny when they  
4 stepped forward, and without that commitment on their part,  
5 this litigation could not have been brought. Therefore, they  
6 laid bare their financial circumstances, their career choices,  
7 and their personal histories to a large extent. Each is a  
8 public service or was a public service employee who held at one  
9 time or another significant debts that they needed to pay off.

10 Am I right, Ms. Konanova?

11 MS. KONANOVA: Yes, your Honor.

12 THE COURT: And each arguably, if properly advised,  
13 would have had significant opportunity to have debts forgiven.

14 Is that right, Ms. Konanova?

15 MS. KONANOVA: Yes, your Honor.

16 THE COURT: And am I right also that an award of  
17 \$15,000 a piece here will compensate them for only a fraction  
18 of the debt that they held at some point in time, if not  
19 currently?

20 MS. KONANOVA: Yes, your Honor. The debts of the  
21 named plaintiffs range from tens of thousands of dollars to  
22 hundreds of thousands of dollars.

23 THE COURT: And of course in the papers that have been  
24 submitted to me there is the evidence that they have suffered  
25 attack personally because they have served in their role here

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1 as named plaintiff and tried to achieve a benefit on behalf of  
2 absent class members. Some of them have been subjected to  
3 vitriol which, sadly, is part of public discourse these days  
4 but should not be part of the burden of serving as a plaintiff  
5 in a class action.

6 Weighing all of those factors, it is my assessment  
7 that the incentive awards for the named plaintiffs should be  
8 given in the amount requested.

9 Therefore, let me turn to the last aspect of this  
10 request, and that is the request for attorney's fees.

11 Let me start by giving some context as I understand  
12 it.

13 Counsel for the class reduced their rates by 20  
14 percent and the American Federation of Teachers has paid  
15 counsel's bills, as we learned today, monthly based on those  
16 reduced rates. As plaintiffs' counsel describe in their  
17 papers, they spent over 11,000 hours on this litigation, and  
18 the attorney's fees have been close to \$6 million -- \$5,915,000  
19 roughly -- and today is the day I learned that that sum had  
20 been paid in its entirety.

21 I am and remain concerned about notice issues here.  
22 As counsel know I typically, and certainly in this case as  
23 well, take the step of a preliminary approval of a class action  
24 seriously and spend time looking at the settlement agreement,  
25 the papers supplied asking for preliminary approval, as well as

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1 the notice that will go out to the class, and I make  
2 suggestions for revision to that class notice, and I did so  
3 here. This was no exception.

4 The settlement agreement provided me with no notice  
5 that counsel's fees were being paid on an ongoing basis or that  
6 there would be a request to reimburse AFT for those payments.  
7 The preliminary approval papers that counsel submitted to me  
8 gave me no notice of those facts. Now, AFT is mentioned in the  
9 settlement agreement in two places, but not in connection with  
10 the fee request here in any way that would put me on notice  
11 that it was a request to reimburse AFT.

12 And because I didn't have that knowledge and counsel  
13 did not advise me of those facts, the notices to the class also  
14 did not alert the class to those facts. Indeed, what they  
15 included were statements that I think now, based on my current  
16 understanding, are misleading. For instance, the notice -- one  
17 notice said that the request would be made for up to \$500,000  
18 to plaintiffs' lawyers for their attorney's fees. Another  
19 notice, the short-form notice, said "these attorneys will  
20 request that a Court award fees and expenses up to \$500,000."  
21 There was no statement that the attorney's fees have been paid  
22 on a monthly basis and that this would be a request to  
23 reimburse the AFT for those payments.

24 In the papers submitted to me requesting payment of  
25 the attorney's fees, I did not understand, even at that time,

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1 that AFT had fully paid the attorney's fees accumulated to date  
2 and that the \$500,000 would be going to AFT. The situation was  
3 described as AFT having made a significant up-front payment,  
4 and the supporting documentation didn't indicate to me that AFT  
5 had paid all the bills submitted by counsel.

6 So I am left with concern here about notice to the  
7 Court and the class, and so I am not going to address the  
8 merits of the application of the request for approval to use  
9 500,000 of the settlement fund to reimburse AFT.

10 Now, that said, I want to make a couple of points:

11 The impact of this, as I understand it, will mean that  
12 Public Service Promise will be even more significantly funded,  
13 since that \$500,000 will now be part of the *cy-près* fund for  
14 Public Service Promise.

15 The second point I would like to make, my decision to  
16 not award this sum to AFT is not a criticism of AFT and should  
17 not be heard as such. They spent about \$6 million on this  
18 litigation to help all public service employees get loan  
19 forgiveness to the extent that the law permits and damages for  
20 any role Navient played in interfering with that important  
21 right. In my judgment, because of AFT's work and its decision  
22 and its generosity, the class has achieved a significant  
23 benefit, and that significant benefit will have or may have a  
24 profound impact on all public service employees.

25 By funding Public Service Promise, we have an

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1 independent, well-qualified board overseeing the work of its  
2 employees in the education and training and outreach that will  
3 help public service employees be better informed and better  
4 able to take advantage of all their rights. And of course  
5 Navient itself has benefited because of the work the AFT has  
6 done here to improve its own practices and be a better  
7 corporate citizen. So I think that the motive behind AFT  
8 acting as it has and the commitment it has shown in this  
9 litigation and funding fully this litigation is nothing but  
10 admirable.

11 So those are my closing comments, but I want to make  
12 sure counsel have an opportunity to add anything to the record  
13 they believe is important at this point.

14 Ms. Konanova?

15 MS. KONANOVA: Your Honor, thank you for those  
16 remarks.

17 The only thing I might add is our efforts in  
18 submitting the papers were to comply with Rule 23 and, in  
19 particular, Rule 23(h), which requires information concerning  
20 the fee award to be made at the time the Court ordered, so that  
21 is the rule with which we were complying in our papers. And at  
22 the same time I understand your Honor's comments about the  
23 adequacy of notice, and I appreciate your remarks.

24 THE COURT: Thank you.

25 And Ms. Simonsen, anything you want to add?

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1 (Pause)

2 THE COURT: Counsel for the defendants?

3 MR. RUFFINO: Your Honor, this is Mr. Ruffino. I  
4 understand that Ms. Simonsen may be having problems with her  
5 connection, but we have nothing to add, and we thank the Court  
6 for its consideration.

7 THE COURT: Thank you very much.

8 Ms. Konanova, can I ask you to submit a revised  
9 judgment next week?

10 MS. KONANOVA: Absolutely, your Honor. Will do.

11 THE COURT: And how about Wednesday next week?

12 MS. KONANOVA: Glad to do so.

13 THE COURT: Thank you so much, and thank you all who  
14 have participated in this hearing either through speaking or  
15 listening in. It is greatly appreciated. Thank you.

16 oOo